



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO. 46 OF 2024

Mersingh @ Murli Gathiya Kharte

..APPLICANT

-VERSUS-

The State of Maharashtra

..RESPONDENT

Advocate for Applicant : Mr.N.R. Shaikh h/f Mr.Shaikh Faisal
Naseemuddin

APP for Respondent/State : Mrs.Pratibha J. Bharad

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 2nd APRIL, 2024.

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C.") and section 37 of the NDPS Act. The applicant has been arrested in connection with crime No.202 of 2022 registered with Erandol Police Station, Tq.Erandol, Dist. Jalgaon, for the offences punishable under sections 8(b), 20(a) of the Narcotic Drugs and Psychotropic Substances Act (For short, NDPS Act).

2. Report dated 05.11.2022 is lodged by the Police Head Constable, Erandol Police Station, Dist. Jalgaon stating that the

secrete information was received and accordingly the raid was arranged on 04.11.2022 at about 6.45 a.m. The raiding party went there at block no.20/1 and block no.12. They found that there were cannabis trees in those agricultural lands. All those trees were taken out which were standing in the crop of Tur. Those cannabis trees were seized in 19 plastic bags weighing 875 kg worth Rs.61,25,000/- along with Honda motorcycle.

3. The learned advocate for the applicant submitted that the applicant has no criminal antecedents. He was not found on the spot. Though the agreement was executed between the owner of the lands and the applicant for its cultivation, it is not legal and it requires registration as per section 17B of the Registration Act. Therefore, the agreement cannot be read in evidence as admissible. He submitted that there is eye witnesses to state that the applicant was cultivating that land and he harvested that cannabis trees in that agricultural land. The statements of witnesses are pointed out in which Sanjay Patil, relative of Digamber Patil, who is owner of the agricultural lands has stated that he used to visit frequently, however, he has not pointed out earlier to the incident that such cannabis trees are planted there. The learned advocate for the applicant pointed out the statement of Champalal Borela, who has never visited the agricultural lands and he has hear-say knowledge of the alleged

cultivation of the cannabis trees in the said agricultural lands. He submitted that the applicant has no criminal antecedents. He will not flee away from the trial. Trial will take long period. The learned advocate for the applicant pointed out 7/12 extract of the agricultural lands. These two lands in which in cultivation column does not reflect the name of this applicant. He therefore, submitted that the applicant is no way concerned with the crime. He has been falsely implicated in the crime. Owner of agricultural land is real culprit, however, he is not made accused and arrested. He submitted to allow the bail application.

4. The learned APP for the respondent/State strongly opposed the application and submitted that the applicant is involved in the serious crime and cannabis weighing 875 kg is seized from those two agricultural lands, which were in his possession of the applicant. Considering the serious nature of the crime and object of the NDPS Act, it is lastly prayed to reject the application.

5. Perused the charge-sheet, particularly the report and the statements of the witnesses, seizure panchanama of cannabis in question and particularly the agreement to cultivate the disputed agricultural lands bearing block nos. 12 and 20/1. Though the learned advocate for the applicant submits that the agreement dated

01.06.2021 is not admissible in evidence under section 17(b), as per proviso to section 49 of the Registration Act, 1908, which reads as under :-

“49.

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.”

6. Such document can be used for collateral purpose. Needless to mention that collateral purpose means not main purpose and it is subordinate purpose. In this proceeding the said agreement of cultivation of agricultural land can be read into evidence only to ascertain whether as to who is in possession of that agricultural land at the relevant time of effecting raid. Therefore, the argument of the learned advocate for the applicant in this regard is not accepted.

7. As far as object of the NDPS Act is concerned, the Hon'ble Supreme Court in the case of ***Hira Singh and another Vs. Union of India and another*** reported in ***(2020) 20 SCC 272***, in paras '10' and '10.1' held as under :-

“10. On merits whether any mixture of narcotic drugs or

psychotropic substances with one or more neutral substance(s) the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, the Statement of Objects and Reasons of NDPS Act is required to be considered. As per the preamble of NDPS Act, 1985, it is an Act to consolidate and amend the law relating to *Narcotic Drugs*, to make stringent provisions for the control and regulation of operation relating to *Narcotic Drugs* and *Psychotropic Substances*. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of objects and reasons and the preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same Act as deterrents.

10.1. In the case of *Directorate of Enforcement vs. Deepak Mahajan*, reported in (1994) 3 SCC 440, it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted (at SCC pp. 453-54, 25), the following passage in *Maxwell*

on Interpretation of Statutes, 10th Edition page 229:

"25. ... `Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'"

Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile."

8. Thus the huge cannabis trees worth 875 Kg are found in the agricultural land, which was in possession of this applicant. No doubt, the applicant was not found on the spot at the time of raid, however, he was according to the prosecution, ran away from that spot and thereafter, he was arrested on 04.06.2022. Considering the quantum of cannabis trees. It is serious nature of the crime as well as object of the NDPS Act and the ratio laid down in the case of ***State by the Inspector of Police Vs. B. Ramu in Criminal Appeal arising out of SLP (Cri) No. 8137 of 2022, decided on 12th February, 2024***, and mandate of section 37 of the NDPS Act, there is prima facie strong material against this applicant that he cultivated that cannabis trees of 875 kg in the agricultural lands bearing block nos.20 and 12 of village Erandol, Tq. Erandol, the applicant is certainly not entitled for bail. The application, therefore, deserves to be rejected. Hence the following order :-

O R D E R

- I. Application is rejected.
- II. Considering the nature of the crime, it would be proper to direct the trial court to try Special Case No. 174 of 2022 as early as possible. If the trial is not commenced within a period of one year, the applicant is at liberty to file application for bail before the trial Court.

(SANJAY A. DESHMUKH, J.)